

*in opinion*

March 17, 1958

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CONCORD, N.H.

Mr. Frederick N. Clarke  
Commissioner of Motor Vehicles  
State House Annex  
Concord, New Hampshire

Dear Mr. Clarke:

Under date of February 10, 1958, you forwarded to me a letter written on February 8, 1958, by Chief Paul W. Knight of the Plymouth Police Department. Chief Knight's letter raised several issues; and you asked my comments thereon before you should reply to his communication.

Chief Knight enclosed, first, six proposed regulations having to do with the operation of motor vehicles. He stated that he would like to present these to the town counsel for drafting as ordinances under "the towns power to regulate the traffic on its streets." He asked your recommendations and approval or disapproval and pointed out that he would not wish to sponsor any ordinance which would conflict with the statutes of the State.

The regulations suggested are indeed salutary, and are well designed to remedy specific causes of motor vehicle accidents. We are of opinion, however, that with the possible exception of one of them they are not within the power of a town to enact. Five of the proposals deal with the actual operation of motor vehicles as such. Despite the power conferred on towns by RSA 31:39 to "make by-laws . . . to regulate the operation of vehicles . . . upon their streets . . .", the Legislature itself has undertaken comprehensively to regulate the manner in which motor vehicles shall be operated. A large part of Title XXI is devoted to this matter. And while the precise subject of some of the five proposed regulations is dealt with specifically (see, e.g., RSA 263:34), the conduct which would be prohibited in each of the five is made criminal in RSA 262:15-a (supp). In this provision the Legislature has set the standard of care which shall be the subject of penal action; and it impliedly forbids the imposition of legal sanction

upon conduct constituting simple carelessness. In short, it is our view that the extensive legislation enacted by the Legislature acts in very large measure to preclude local ordinances having to do with the manner and method of operating a motor vehicle.

The one possibly acceptable regulation proposed is that which would forbid the opening of a vehicle door in such a way as to endanger approaching traffic. Since this regulation might be directed against anyone wrongfully opening a door, and since it partakes more of the nature of a regulation relating to parking than to the actual operation of a motor vehicle, its enactment might well be a valid exercise of a town's power.

The second subject raised by Chief Knight has to do with the disposition of fines levied because of violations of the law of the road (RSA 253:48). We concur with Chief Knight in this regard; but we point that the law of the road relates to three acts only as set forth in RSA 250:1, RSA 250:2, and RSA 250:3.

His final comment relates to mufflers; and it would appear that he feels that RSA 263:46 is inadequate for the protection of the public. The statute cited does, however, set the standard in this regard now satisfactory to the Legislature; and such standard could be changed only by additional legislation.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

WEW/aml